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No. 92-825

IN THE

Supreme Court of the United States

OCTOBER TERM 1992

ANTHONY T. LEE, *et al.*,

Petitioners,

V.

TALLADEGA COUNTY BOARD OF EDUCATION, *et al.*,

AND

UNITED STATES OF AMERICA

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONERS' REPLY TO BRIEFS IN OPPOSITION TO CERTIORARI

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Respondents' opposition briefs fail to address adequately the fact that the Court of Appeals for the Eleventh Circuit ruled as a matter of law that existing injunctive decrees in this school desegregation case were *implicitly vacated* when the district court used the term "unitary status" in an order dismissing the case. The court below stated:

> *By operation of law*, the orders enjoining the [School Board] were dissolved *when the district*

> *court declared that the school system had attained unitary status.*

(App. 5a)(emphasis added).

> [T]he district court found in March 1985 that the Talladega County School System had achieved unitary status. This finding *implicitly dissolved* the injunctions in effect at that time.

(App. 8a)(emphasis added, footnote omitted). The ruling below is clear and undeniably conflicts with *Board of Education of Oklahoma City Public Schools v. Dowell*, __ U.S. __, 111 S. Ct. 630, 636 (1991), announcing that a precise statement is required when school desegregation decrees are being terminated.

Respondents attempt to distinguish this case from *Dowell* by arguing that *Dowell* was ambiguous with respect to final termination of the case, where in this case it is clear that the district court intended the case to be concluded finally. Talladega County Board of Education, Brief in Opposition at 5; United States, Brief in Opposition at 9. But simply saying that the cases are distinct does not make them so. In *Dowell*, the court anticipated that the decree would remain in effect despite dismissal of the case. *See* App. at 37a-39a. Here the district court incorporated into its dismissal order a School Board Resolution making clear the continuing obligations on the part of the Board, including continued compliance with

prior court orders.[1] *See* App. at 26a-28a. Thus, this case is just like *Dowell*.

Moreover, as implicitly conceded by the United States in footnote 4 of its Brief in Opposition, the ruling below re-opens the door for district court dismissals of desegregation cases without express dissolution of the injunctive decrees. The confusion spawned by this approach is as evident in this case as it was in *Dowell*. The courts in the Eleventh Circuit have already adopted inconsistent approaches to dismissal of desegregation cases. *See Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1413 & n. 12, 1414 (11th Cir. 1985) and cases cited therein; *United States v. Board of Education of Jackson County*, 794 F.2d 1514, 1543 (11th Cir. 1986) ("That school districts have become unitary, however, does not inevitably require the court to vacate the orders upon which the parties have relied in reaching that state.") Reversal is necessary to eliminate the continued confusion, and the conflict with *Dowell*. Furthermore, summary reversal is warranted on this record.

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[1]Contrary to the suggestion of the Talladega County Board of Education, Brief in Opposition at 2, the district court in the separate litigation, *Elston v. Talladega County Board of Education*, App. 34a-36a, found no violation of the court orders despite the large number of interdistrict transfers because the court concluded that Talladega County was not intentionally discriminating and had no legal duty to stop the transfers. Talladega County Board of Education, Brief in Opposition, A-19-20. This, of course, totally ignores the outstanding court orders, which was justified by application of the holding that Petitioners seek to have this Court review in this proceeding.

CONCLUSION

For the foregoing reasons, as well as those set out in the Petition, the writ should be granted and the judgment below should be reversed.

Respectfully submitted,

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